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106TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT 106–722

PATENT AND TRADEMARK OFFICE REAUTHORIZATION ACT

JULY 11, 2000.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. COBLE, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.R. 4034]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 4034) reauthorizing the United States Patent and Trademark Office, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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PURPOSE AND SUMMARY

The Patent and Trademark Office (PTO) is a self-sustaining Federal agency which subsists exclusively on revenue generated from the collection of fees imposed on the inventor and trademark communities. Since 1992, however, more than $500 million in PTO fees have been diverted to other programs. The purpose of H.R. 4034, the "Patent and Trademark Office Reauthorization Act," is to ensure that the PTO is vested with the authority to retain all the

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user fees it collects for agency expenditures. This change will maximize the ability of the PTO to serve the growing demand for its services by the inventor and trademark communities.

BACKGROUND AND NEED FOR THE LEGISLATION

PTO FUNDING DIVERSION: HISTORY

Amid funding scarcity in 1982, Congress dramatically increased fees associated with obtaining and maintaining trademark registrations and patents to recover the costs of processing patent and trademark applications. For the first time, fee income would be made available to the PTO on a dollar-for-dollar basis. Certain activities (e.g., high-level management) would remain funded through appropriations derived from taxpayer revenues, and not fees.

Under this new system, Congress had to appropriate the fee revenue to the PTO in the annual Commerce-State-Justice appropriations bill. The amount of the fees, however, did not count against the budget "cap" on expenditures imposed on the appropriators. Consequently, they had no incentive to appropriate less than the amount PTO collected.

By 1990, approximately 80% of PTO operations were funded through user fees. In an effort to reduce public expenditures and the national debt, Congress enacted the Omnibus Budget Reconciliation Act (OBRA), which, among other things, transformed the PTO into a wholly fee-supported agency. To compensate for the remaining taxpayer revenue which would be withdrawn, OBRA imposed a massive statutory patent fee increase (referred to as a "surcharge") on American inventors for a 5-year period.

As part of this budget agreement, a scoring system was adopted to ensure that savings would be accurately tracked through the appropriations process. To this end, Congress mandated that the income from the surcharge be deposited into a specially-created surcharge fund in the Treasury. Unlike other fees collected by PTO, those in the surcharge fund counted against the expenditure cap of the appropriators. This meant that every dollar not spent from the surcharge fund would enable the appropriators to spend another taxpayer dollar to underwrite a different (non-PTO) initiative. Theoretically, the unappropriated fee income remained in the surcharge fund, but as a practical matter the revenue could never be appropriated to PTO unless the scoring rules were changed.

Initially, Congress appropriated the total amount deposited in the fund to PTO. After only 1 year, however, Congress began to withhold a portion of the entire amount deposited in the fund annually so that it could proved additional money to other programs. Compounding the problem, Congress later extended the OBRA surcharge provisions for an additional 3 years to take further advantage of the arrangement.

Although the surcharge expired at the end of fiscal year 1998, Congress ultimately increased the statutory fees to compensate for the lapse of the surcharge. In addition, the income derived from the increase is treated like the old surcharge funds. As a result, an amount equal to the income from the increase is added to the amount available to the appropriators, who then have the option of earmarking that amount for PTO operations or to other programs.

Moreover, the appropriators have also taken to capping the amount of fee revenue that the PTO may use. For example, in fiscal year 1999 PTO fee collections were subject to two caps as well as a rescission. The appropriators prohibited PTO from spending $116 million in collected fees until the following fiscal year (2000). They also created an upper limit cap which prevented the agency from spending any fee collections in excess of the total amount of fee revenues which PTO had estimated it would receive. Thus, when unexpected additional filings generated an extra $26 million in fiscal year 1999, the PTO could not use the revenue to process the increased workload for which the fees had been paid. Finally, Congress simply rescinded another $72 million that same fiscal year after PTO identified a significant amount of unrecorded fee income from fiscal year 1998 that had resulted from accumulated mail-room processing delays.

By denying PTO the ability to spend fee revenue in the same fiscal year in which it collects the revenue, the appropriators may spend an equivalent amount on some other program without exceeding their §602(b) caps. Although the money is technically available to PTO the following year, it has already been spent. The legislative response to this funding problem has been to increase the amount of fee collections unavailable to PTO in that fiscal year.

To illustrate: in the current fiscal year PTO is scheduled to receive $116 million in fiscal year 1999 fee revenues that it was not permitted to spend that year. But those funds were already diverted in fiscal year 1999 to other programs. The Commerce-State-Justice appropriations act for fiscal year 2000 "solves" the problem by preventing PTO from accessing $229 million in fiscal year 2000 collections. The $116 million from fiscal year 1999 that PTO is now permitted to tap is actually a portion of the $229 million to be collected in fiscal year 2000; and the difference between the two figures—$113 million—will in turn be diverted to other government programs in fiscal year 2000.

In sum, since 1992, more than $554 million in PTO revenue has been diverted, rescinded, or otherwise not made available to the agency.

ADMINISTRATION REQUEST FOR FISCAL YEAR 2001

The developments in fiscal year 2000 serve as a template for the President's budget submission for fiscal year 2001. It would allow PTO to spend $229 million in fiscal year 2000 collections plus an additional $26 million in fiscal year 1999 collections arising from greater than estimated application filings that went unspent pursuant to the budget cap of that same fiscal year. On paper, the President's budget also prohibits the PTO from spending $368 million in estimated fiscal year 2001 fee collections. In reality, however, the $255 million ($229 million plus $26 million) that PTO is permitted to spend will come from the $368 million source. The difference—$113 million—will be diverted.

Should the appropriators adopt the President's budget, the PTO will have lost more than $677 million in collected fees since fiscal year 1992.

HEARINGS

The committee's Subcommittee on Courts and Intellectual Property held a hearing on H.R. 4034 on March 9, 2000. Testimony was received from nine witnesses representing nine organizations.

COMMITTEE CONSIDERATION

On March 23, 2000, the Subcommittee on Courts and Intellectual Property met in open session and ordered reported the bill H.R. 4034 by voice vote, a quorum being present. On May 9, 2000, the committee met in open session and ordered reported favorably the bill H.R.4034 by unanimous consent, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the committee reports that the findings and recommendations of the committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives is technically applicable because the Congressional Budget Office has noted that the legislation provides (de minimis) new budgetary authority; however, the very cost estimate provided by that organization also reveals that the changes set forth in H.R. 4034 will generate surplus funds amounting to roughly $700 million between Fiscal Years 2001 and 2005.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the committee sets forth, with respect to the bill H.R. 4034, the following estimate and comparison prepared by the director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 19, 2000.

Hon. HENRY J. HYDE, *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4034, the Patent and Trademark Office Reauthorization Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Hadley, who can be reached at 226–2860.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure

cc: Honorable John Conyers Jr.,
Ranking Democratic Member

H.R. 4034—Patent and Trademark Office Reauthorization Act.

SUMMARY

Under current law, the Patent and Trademark Office (PTO) collects fees on applications and other activities related to patents and trademarks. Such fees are recorded as an offset to discretionary spending and can only be collected and spent as provided in appropriation acts. H.R. 4034 would authorize the PTO to collect fees without appropriation action and would make such funds available to the agency until expended.

CBO estimates that H.R. 4034 would increase revenues (governmental receipts) and reduce offsetting collections by about $6.3 billion over the 2001–2005 period. Because such fees could be spent by PTO without appropriation action, the bill also would increase direct spending by about $5.6 billion over the same period. Because H.R. 4034 would affect receipts and direct spending, pay-as-you-go procedures would apply.

H.R. 4034 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 4034 is shown in the following table. For purposes of this estimate, CBO assumes enactment near the start of fiscal year 2001. The costs of this legislation fall within budget function 370 (commerce and housing credit).

By fiscal year, in millions of dollars

	2000	2001	2002	2003	2004	2005
SPENDING SUBJECT TO APPROPRIATION						
PTO Baseline Under Current Law						
Estimated Authorization Level [1]	-116	255	260	267	275	284
Estimated Outlays	-100	90	164	196	199	202
Proposed Changes						
Estimated Authorization Level	0	0	-260	-267	-275	-284
Estimated Outlays	0	374	-31	-176	-199	-202
PTO Baseline Under H.R. 4034						
Estimated Authorization Level [1]	-116	255	0	0	0	0
Estimated Outlays	-100	464	133	20	0	0
CHANGES IN DIRECT SPENDING						
Estimated Budget Authority	0	1,072	1,158	1,251	1,351	1,459
Estimated Outlays	0	697	1,021	1,188	1,284	1,386
CHANGES IN REVENUES						
Estimated Revenues	0	1,072	1,158	1,251	1,351	1,459

[1] The 2000 level is the estimated net amount appropriated for that year. The 2001 level is the estimated amount appropriated for that year through an indefinite advance appropriation.

BASIS OF ESTIMATE

H.R. 4034 would allow the PTO to collect and spend fees associated with filing patents and trademarks without appropriation action. Patent and trademark fees are governmental in character because such fees result from an exercise of sovereign power—recognizing and protecting intellectual property. Therefore, once these fees are no longer subject to appropriation action, CBO expects that they would be recorded as revenues in the federal budget.

CBO estimates that patent and trademark fees will bring in about $1 billion in fiscal year 2000. Based on the historical growth in applications filed for patents and trademarks, we project receipts from such fees will total about $6.3 billion over the 2001–2005 period. Under H.R. 4034, offsetting collections would decline by this amount and revenues would increase by the same amount. Based on historical spending patterns of the agency, CBO estimates PTO would spend about $5.6 billion of these revenues over the 2001–2005 period.

PAY-AS-YOU-GO CONSIDERATIONS

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in outlays and governmental receipts that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

By fiscal year, in millions of dollars

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Changes in outlays	0	697	1,021	1,188	1,284	1,386	1,497	1,612	1,733	1,863	2,003
Changes in receipts	0	1,072	1,158	1,251	1,351	1,459	1,576	1,694	1,821	1,957	2,104

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 4034 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

ESTIMATE PREPARED BY:

Federal Costs: Mark Hadley (226–2860)
Impact on State, Local, and Tribal Governments: Shelley Finlayson (225–3220)
Impact on the Private Sector: John Harris (226–2940)

ESTIMATE APPROVED BY:

Peter H. Fontaine
Deputy Assistant Director for Budget Analysis

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to rule XI, clause 2(1)(4) of the Rules of the House of Representatives, the committee finds the authority for this legislation in Article I, section 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Sec. 1. Short Title. The act may be cited as the "Patent and Trademark Office Reauthorization Act."

Sec. 2. Patent and Trademark Office Funding. H.R. 4034 is simple and straightforward. It amends two key provisions of §42 of the Patent Act, which prescribes the PTO funding mechanism.

First, the requirement in existing subsection (b) that all agency funds be credited to a special PTO *Appropriation* Account is deleted; instead, such funds are to be credited to a PTO Account in the Treasury.

Second, the requirement in existing subsection (c) that subjects agency access to and expenditure of collected fees to *appropriations* is also deleted. This means that the Commissioner will have the authority to collect all fees and use them for agency operations until expended. The appropriators are not involved.

AGENCY VIEWS

THE DEPUTY SECRETARY OF COMMERCE,
Washington, DC, May 9, 2000.

Hon. HENRY J. HYDE, *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: I am writing to set forth the views of the Administration on H.R. 4034, the Patent and Trademark Office Reauthorization Act. The bill amends section 42 of title 35, United States Code, regarding the fees collected by the United States Patent and Trademark Office (USPTO), to delete the introductory clause in the first sentence of subsection (c) of this section which subjects fees that would otherwise be available to the USPTO to the discipline of the appropriations process. Because the effect of the change alters the timing of the availability of the funds in a way that is inconsistent with the President's budget for FY 2001,

the Administration would oppose enactment of the bill in its current form.

In FY 2001, the Administration's Budget proposes that of fees collected in excess of $783,843,000, $367,744,000 shall not become available to the USPTO before October 1, 2001. In addition, the Budget proposes that $229,000,000 of fees collected in FY 2000 and $25,889,000 of fees collected in FY 1999 will also become available to the USPTO in FY 2001. By amending section 42 to remove the appropriations clause, H.R. 4034 would make all fees collected by the USPTO immediately available.

The Administration fully supports providing the USPTO with sufficient resources to serve America's inventors and to strengthen the Nation's intellectual property system. However, there are several models that could be considered to ensure the USPTO receives funds sufficient to meet its resource needs. To that end, the Administration would like to work with the Committee to address these concerns.

While the Administration would oppose the bill in its current form, we look forward to working with the Congress to meet the needs of the USPTO in furthering the Nation's technological growth. The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the submission of this letter to the Committee.

Sincerely,

ROBERT L. MALLETT.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SECTION 42 OF TITLE 35, UNITED STATES CODE

§ 42. Patent and Trademark Office funding

(a) * * *

(b) All fees paid to the Director and all appropriations for defraying the costs of the activities of the Patent and Trademark Office will be credited to the Patent and Trademark Office [Appropriation] Account in the Treasury of the United States.

(c) [To the extent and in the amounts provided in advance in appropriations Acts, fees] *Fees* authorized in this title or any other Act to be charged or established by the Director shall be collected by and shall be available [to the Director] *until expended* to carry out the activities of the Patent and Trademark Office. All fees available to the Director under section 31 of the Trademark Act of 1946 shall be used only for the processing of trademark registrations and for other activities, services, and materials relating to

trademarks and to cover a proportionate share of the administrative costs of the Patent and Trademark Office.

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